IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 145 OF 2006.

Vitthal Dhaku Bodekar.
Age: 50, Occ.: Agriculture,
R/o. Narur, Taluka Kudal,
Dist. Sindhudurg. ... Appellant.

Versus.

1. Pandurang Mukund Sarnobhat
   Age: 60, Occ.: Agriculture,
2. Biraji Dhaku Bodkar,
   Age: 38, Occ.: Agriculture,
   both R/o. Nerur, Taluka Kudal,
   Dist. Sindhudurg. ... Respondents.

Shri A.S.Khandeparkar for the Appellant.

Shri Milind Parab for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 11th December, 2007.

ORAL JUDGMENT.:

1. Heard the learned Advocate for the Appellant and the Advocate for the 1st Respondent. The Second Appeal is admitted on the following substantial question of law:

   i) Whether the Courts below committed an error by not referring the issue of tenancy to the Agricultural Lands Tribunal in view of section 85A of the Bombay Tenancy and Agricultural Lands

Act, 1948?

2. The Appeal is admitted on the aforesaid substantial question of law. The Advocate for the 1st Respondent/original Plaintiff waives service. Service of notice to the second Respondent is not necessary.

3. The learned Advocates appearing for the parties agree that the impugned Judgment and decree be quashed and set aside and the suit be remanded to the trial Court with a direction to frame an issue of tenancy and to refer the same to the Agricultural Lands Tribunal. The parties agree that the decree of perpetual injunction passed by the trial Court will continue to operate as an interim order during the pendency of the suit.

4. Hence the following order is passed:

i) The impugned Judgments and Decrees are quashed and set aside and the Regular Civil Suit No.70 of 1990 is restored to the file of the learned Civil Judge, Junior Division at Kudal.

ii) The parties are directed to appear before the learned trial Judge on 21st January

2008 at 11.00 a.m.

iii) The learned trial Judge will frame an issue on the basis of the plea of tenancy raised by the Appellant and shall refer the same for the decision to the Agricultural Lands Tribunal. The concerned Agricultural Lands Tribunal will decide the said issue as expeditiously as possible and preferably within a period of six months from the date of appearance of parties before the said Tribunal.

iv) Till final disposal of the suit, clause 2 of the operative part of the decree passed by the trial Court will operate as an interim order.

v) After receiving the findings from the Tribunal, the learned trial Judge will given an opportunity to the parties to lead further evidence in addition to the evidence which is already on record. Thereafter the suit will be decided in accordance with law.

vi) The Second Appeal is partly allowed in the above terms with no order as to costs.

vii) It is made clear that all contentions of the parties on merits of the suit are expressly kept open.

viii) Writ to be sent down immediately.

ix) The parties and the trial Court to act on an authenticated copy of this order.

Judge.